

PURCHASING AND LICENSING COMMITTEE

11-0330R

RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING  
LIQUOR LICENSE OF ZEITGEIST ARTS, LLC (TEATRO/ZINEMA/ZA  
CAFÉ), 222 EAST SUPERIOR STREET.

CITY PROPOSAL:

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

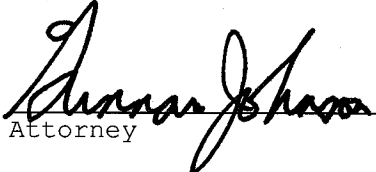
a) On May 4, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Zeitgeist Arts, LLC, (Teatro/Zinema/Za Café), 222 East Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. \_\_\_\_\_;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on June 27, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. \_\_\_\_\_ regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Zeitgeist Arts, LLC, d/b/a Teatro/Zinema/Za Café, 222 East Superior Street are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500.00 penalty, but reduce the penalty to \$300.00, based on the mitigating circumstances stated in the report to the council, and that payment of the \$300.00 penalty be made within 30 days of final council action.

Approved as to form:

  
Attorney

CLERK JJC:mao 6/13/2011

STATEMENT OF PURPOSE: The alcohol, gambling and tobacco commission (AGTC) held a hearing on May 4, 2011, regarding the liquor license of Zeitgeist Arts, LLC. On November 2, 2010, the police department conducted compliance checks and the bartenders were cited for selling alcohol to an underage individual. The licensee is responsible for the actions of its employees and was also cited for selling to an underage individual. Section 8-9 provides that the presumptive penalty for a first offense is a \$500 penalty. Since this incident, the licensee took remedial action by scheduling alcohol training for all employees. Because of the mitigating circumstance of alcohol server training, the recommendation of the AGTC is to impose a civil penalty of \$500 payable, with \$200 stayed for one year pending no further violations, and \$300 payable within 30 days of council action.

CITY OF DULUTH  
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

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REPORT TO THE CITY COUNCIL

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**IN THE MATTER OF: Zeitgeist Arts, LLC, d/b/a Teatro/Zinema/ZA Cafe, 222 E. Superior Street, Duluth, Minnesota 55802.**

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on April 6, 2011, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on April 6, 2011, upon completion of the hearing.

Terri L. Lehr, Assistant City Attorney, City of Duluth, Office of the City Attorney, 410 City Hall, Duluth, Minnesota, 55802, appeared on behalf of the City licensing staff. Licensee appeared through its managing agent, Tony Cuneo.

This Report is a recommendation, not a final decision. The Duluth City Council will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions and Recommendations contained herein. Pursuant to Minn.Stat. §14.61, the final decision of the Council shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the City Council. Parties should contact the City Clerk to ascertain the procedure for filing exceptions or presenting argument.

**FINDINGS OF FACT**

The commission makes the following findings of fact:

1. Licensee is licensed by the City of Duluth to sell intoxicating liquor "on-sale" at the premises located at 601 W. Superior Street, Duluth, Minnesota.
2. On November 2, 2010, Jacob Kouba and Timothy Gregorich, employees of Licensee, sold and served intoxicating liquor to an underage person at Licensee's business establishment known as Zinema Theater. Kouba and Gregorich were cited for the violation and convicted on November 12, 2010.

3. Licensee was cited under Duluth City Code section 8-35 for the unlawful sale, convicted of this offense on November 22, 2010 and paid a \$200.00 fine.
4. The Commission then issued its Notice of Hearing and set a hearing date of May 4, 2011.
5. Section 8-9(b)(1) of the Duluth Legislative Code provides that grounds for disciplinary action include the operation of the liquor establishment in violation of any law. Section 8-35 provides that every licensee shall be responsible for the conduct of the licensee's place of business and that any violation of Chapter 8 of the Duluth Legislative Code committed on the licensed premises by an employee of the licensee shall be deemed the act of the licensee as well as the employee.
6. This is the Licensee's first violation for purposes of the presumptive penalty. Mitigating circumstances include the following: Tony Cuneo and Walter Lang, the Licensee's beverage manager, testified that they took immediate remedial action following this incident. A training was scheduled for all employees (including the bar, theater and concession) and held on December 12, 2010. The cost of the training was in excess of \$200. In addition, the Licensee plans to hold the training annually.

### **CONCLUSIONS**

Based upon these facts, the commission makes the following conclusions:

1. That the violations alleged in the Notice of Hearing occurred.
2. That the Licensee is liable for the violations occurring on its licensed premises on November 2, 2010.
3. Section 8-9(c) of the Duluth City Code provides that the presumptive penalty for a first offense is a \$500.00 civil penalty. However, mitigating circumstances exist as follows: The Licensee undertook immediate remedial action following the incident by scheduling and holding a training for all employees, said training held

on December 12, 2010. In addition, the Licensee plans to hold the training annually.

### RECOMMENDATION

It is the recommendation of the Duluth Alcohol, Gambling and Tobacco Commission that the Duluth City Council impose the following civil penalty:

1. A \$500.00 penalty, but reduce the penalty to \$300.00, based on the mitigating circumstances set forth above.
2. That payment of the \$300.00 penalty be made within 30 days of final council action.

Dated: June 14, 2011

DULUTH ALCOHOL, GAMBLING  
AND TOBACCO COMMISSION

By:   
George Hanson, President

**Alcohol, Gambling, and Tobacco Hearing**  
**May 4, 2011**  
**Zeitgeist Arts, LLC, d/b/a Teatro/Zinema/Za Cafe, 222 East Superior Street**

- Oswald: The next hearing is for Zeitgeist Arts at 222 East Superior Street.
- Hanson: Welcome.
- Cuneo: Thank you. President Hanson, Commissioners, my name is Tony Cuneo, Executive Director at the Zeppa Family Foundation
- Lang: And, I'm Walter Lang, beverage manager at the Zeitgeist building.
- Hanson: Attorney Lehr, would you like to proceed?
- Lehr: Thank you, President Hanson. This matter is not contesting terms of actually what happened. I did have a telephone conversation with Mr. Cuneo. He acknowledged to me the two employees involved were ticketed for sale to a minor. They both paid their tickets and the licensee was also given a ticket under City Code 8-35. Licensee also paid that ticket and proof of payment of that ticket is also attached to the Notice of Hearing. This is considered a first offense for purposes of presumptive penalty of \$500.00 and so with that I would submit the City's case with the documents attached to the Notice of Hearing.
- Hanson: Any questions, gentlemen? Would you like to say something on your behalf?
- Cuneo: Sure. We just wanted to be here to make ourselves available for questions and also, I guess, to make clear that we take this matter very seriously. I brought Walter with to be able to tell you a little bit of what the alcohol training and compliance training that we went through. You guys, I think, were talking about it with the last person who was here and that we've instituted a policy and we'll do that training on an annual basis. Kind of immediately after this happened, we scheduled that training.
- Hanson: You've already scheduled it?
- Cuneo: It's already happened.
- Lang: We had the training on December 12<sup>th</sup> from Best Beverage. On December 12<sup>th</sup>, Tony came and gave a liquor training for all the building's employees.

Hanson: How many folks do you employ down there that serve alcohol?

Lang: Oh. Well, all the servers and bartenders at the restaurant, which I don't have the exact numbers right now for you.

Hanson: Like, are we talking ten or we talking 30?

Lang: 15 to 20.

Hanson: Okay.

Lang: And then down in the theater, there's maybe five or six and also in the concession stand that's attached, there's two to three.

Hanson: You haven't done training like this before then?

Lang: No, I'd recommended when I was first hired to do it, but the previous supervisor didn't feel we needed it.

Hanson: Well, I guess we found out otherwise, didn't we?

Lang: Yeah. And after this happened, I got on the phone with Tony from Best Beverage and scheduled the training.

Hanson: What did it cost you out of curiosity?

Lang: I think it was like \$200, \$250 maybe.

Hanson: A person?

Lang: No. For the whole class.

Hanson: Okay.

Lang: For everybody that was there.

Hanson: I was just gonna say, it would get kinda spendy with 20 people.

Lang: We needed to spend \$250.00 on a class like that instead of paying fines.

Hanson: It might become worth it overnight.

Lang: Yes.

Hanson: Well, that's good to hear. Our main concern is, we want you to stay in

business, but we don't want you to serve alcohol to minors.

Lang: Yes. We also do in our hiring packets for new employees that obviously weren't with us on December 12<sup>th</sup>. I have the packets from Best Beverage that I give to them and go over the liquor awareness training as well.

Hanson: Anything more you want to say on your behalf.

Cuneo: Only to reiterate we want to give this training on an annual basis, and we know this is a privilege and we take it seriously.

Hanson: And, there's other things you can do. You know, you can do a log for any incidents. You probably do any way for other things. You can do refreshers yourself, in house. You can have friends that have people that aren't quite old enough go in and check your own staff if you want. You know, but, you know, a little bit of vigilance can just save you a whole lot of hassle.

All right. Looking for any questions or comments. Looking for a motion.

Birchland: I can try one. I will make a motion that we reduce the fine from the \$500.00 civil penalty to a \$300.00 civil penalty citing the fact that immediately after the citation there was training. They took it seriously enough that they had training within basically a month after the violation occurred. That training was approximately \$200.00. So, I think in the spirit of their trying, we should try to help that along by reducing that fine to \$300.00.

Hanson: I need a second.

Stauber: I'll second.

Hanson: Discussion.

Martha: So are you staying the other \$200.00 or are you just making the fine \$300.00 and staying \$200?

Birchland: My motion was to reduce the fine to \$300.00 from \$500.00. Right.

Hanson: Do you have the motion clear there, Martha? It's a reduction to \$300.00.

Birchland: Flat reduction payable 30 days after City Council hears it.

Hanson: Okay and that was seconded. All right. Any further discussion? All right. All in favor of the motion say "Aye".



Hanson: Motion passes unanimously. You also will be welcome to appear in front of the City Council and if Councilor Cuneo is there he will have to recuse himself from voting on this issue. So, I'm guessing that he'll probably be able to let you know when it goes in front of the Council.

Cuneo: Thank you.

Hanson: Thank you, Gentlemen.

CITY OF DULUTH  
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

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NOTICE OF HEARING

\* \* \* \* \*

TO: Zeitgeist Arts, LLC, d/b/a Teatro/Zinema/ZA Cafe, Attention: Kathryn Eldred,  
222 E. Superior Street, Duluth, Minnesota 55802

PLEASE BE ADVISED that on **May 4, 2011**, at **4:45 p.m.** in the Council Chambers at City Hall in the City of Duluth, the Duluth Alcohol, Gambling and Tobacco Commission will hold a hearing, pursuant to Minnesota Statutes §340A.415 and Section 8-9 of the Duluth City Code, to consider what, if any, disciplinary action, including suspension or revocation or a civil fine of not to exceed \$2,000, will be recommended to the Duluth City Council with respect to your intoxicating liquor license.

If you do not appear at said hearing, the Alcohol, Gambling and Tobacco Commission may, in your absence, recommend that the Duluth City Council consider the allegations contained herein to be true.

At the above-mentioned hearing, you may, at your option, be represented by legal counsel.

The Rules for Contested Case Hearings Minnesota Rules Chapter 1400, Part 5550, et.seq, to the extent applicable, and Minnesota Statutes §14.57 through §14.69 govern. Copies of these laws and rules may be obtained at the Duluth Public Library or online from the official web site of the State of Minnesota.

The City will present its case, and then you will have an opportunity to present your case. At the time of the hearing, you should be prepared to produce any evidence and arguments you feel are relevant to the issues raised. You or your attorney will be allowed

to cross-examine all adverse witnesses. If needed, subpoenas are available (Minnesota Rules 1400.7000).

You must advise the Commission if you seek to admit evidence that is classified not public. If data that is not public is admitted, it may become public. Relief is available under Minnesota Statutes §14.60, subd. 2. If an interpreter is needed, you must inform the Commission and one will be appointed.

**A notice of appearance must be filed with the City Clerk within 20 days of the date of service of the notice of hearing if you intend to appear at the hearing unless the hearing date is less than 20 days from the issuance of the notice of hearing.**

**The person representing the City, who you should contact to discuss settlement or other concerns is Terri L. Lehr, Assistant City Attorney.**

The hearing will be open to the public.

The following facts give rise to the inquiry and hearing mentioned above:

1. Zeitgeist Arts, LLC d/b/a Teatro/Zinema/ZA Cafe, is licensed by the City of Duluth to sell intoxicating liquor “on-sale” at the premises located at 222 East Superior Street, Duluth, Minnesota 55802.
2. On or about November 2, 2010, Jacob Kouba and Timothy Gregorich, employees of Licensee, served and sold intoxicating liquor to an underage person at Licensee’s business establishment known as Zinema Theater. Kouba and Gregorich were cited for the violation under Duluth City Code section 8-28 and convicted on November 12, 2010. *See City Docs. No. 1-3 (Duluth Police Department Report ICR# 10-399260; Proof of Payment of Ticket by Kouba; and Proof of Payment of Ticket by Gregorich).*
3. Licensee was cited under Duluth City Code section 8-35 for the unlawful sale and convicted of this offense on *See City Docs. No. 4-5 (City of Duluth Ordinance Violation Ticket No. LP10001759; and Proof of Payment of Ticket).*

4. This is the Licensee's first offense for purposes of the presumptive penalty schedule provided for in Duluth City Code Section 8-9(c).
5. Pursuant to Duluth City Code Section 8-9(c), absent aggravating or mitigating circumstances, the presumptive penalty for a first offense is a \$500.00 civil penalty.


Pursuant to City Code Section 8-9, the Alcohol, Tobacco and Gambling Commission will consider whether the violation alleged is good cause for suspension or revocation of the liquor license or for the imposition of a civil penalty.

(Records Supporting This Notice Are Attached As City Document Numbers 1-5.)

Dated: April 4, 2011

JEFFREY J. COX, Secretary  
Alcohol, Gambling and Tobacco  
Commission

and

  
\_\_\_\_\_  
TERRI L. LEHR, (0191668)  
Assistant City Attorney

Gunnar B. Johnson, City Attorney  
Attorneys for the Alcohol, Gambling and  
Tobacco Commission

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**Duluth Police Department**  
Main Office

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Reported Date: 11/02/2010 Time: 20:00 Case No.: 10399260  
Code: DU8.28 Crime: DPD-LIQUOR-SALES TO MINORS PROHIBITED  
Class: M4199 Occurrence Date: 11/02/2010  
Location: 222 E SUPERIOR ST, 1DU, DULUTH, MN

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===== NARRATIVE =====

On 11/02/10, Squad 89-Investigator Stovern and I, Investigator Rodman-Squad 84, were doing alcohol compliance checks in the city of Duluth, specifically the downtown area, along with our control subject, NICHOLAS EDWARD PRACHER, DOB: 02/26/1990 (19-years of age). At approximately 2000 hours, we entered the Zinema Theater on Superior Street. PRACHER went down the stairs where they sell liquor where he ordered a Grain Belt Premium bottle of beer. JACOB KOUBA gave PRACHER the beer. KOUBA was working behind the counter with TIMOTHY GREGORICH. PRACHER then moved over to pay for the beer. He gave GREGORICH the money and GREGORICH returned the change to him. I observed the money exchange between GREGORICH and PRACHER. Neither KOUBA nor GREGORICH asked PRACHER for an ID.

Investigator Stovern and myself then went downstairs where we identified ourselves as police officers. We advised both KOUBA and GREGORICH that they had just sold alcohol to a minor. They were issued Administrative citations under City Ordinance 8-28. KOUBA's citation is #LP10000253 and GREGORICH's citation is #LP10000254. Both were advised the fine would be \$200.00 and it was not a mandatory Court appearance; however, they could go to Court on the issue.

See written statement by NICHOLAS PRACHER. Also see the CAD printout for details.

DULUTH POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
(Not under Arrest)

PAGE 1 OF

DATE 11/2/10 TIME 2037

PLACE DDP

I, NICHOLAS EDWARD PRACHER

, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to OFF RUMMEL. I volunteer the following information of my own free will.

My date of birth is 2-26-90 and I live at 29000 C RO 41, WILLOW RIVER MN 55395

Phone Number is 218-390-3409

SIGNATURE Nicholas Pracher

On 11/2/10 at approximately 1855 hours I walked up to the front counter at the Zimmer white working as an under age deputy with DDP. I ordered a Quinn Post Premium from the taller of the two white males working behind the counter. He got the beer, opened it and placed it in front of me, while the second shorter white male took my money and handed me my change. The taller of the two had light colored hair and wore a blue sweater over a green striped shirt underneath. The shorter of the two had dark hair, graying amounts of facial hair and a white shirt with brown stripes.

I have read each page of my statement consisting of 1 page(s), each page bears my signature and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

SIGNATURE Nicholas Pracher

DATE 11/2/10

WITNESS

WITNESS

I have received a copy of my statement.

SIGNATURE

City of Duluth - Ticket Inquiry 7.0 Version 2.0.1

<b>Ticket Info</b> Ticket Number: <input type="text" value="LP10000253"/> Issue Date: <input type="text" value="11/02/2010"/> Issue Time: <input type="text" value="20:00"/>		<b>Driver Info</b> Driver Lic/State/D00: <input type="text" value=""/> <input type="text" value=""/> <input type="text" value="10/02/1988"/> Name Last/First/MI: <input type="text" value="KOUSA"/> <input type="text" value="JACOB"/> <input type="text" value="E"/> Street Address: <input type="text" value="2417 VERMILION ROAD"/> City/State/Zip: <input type="text" value="DULUTH"/> <input type="text" value="MN"/> <input type="text" value="55812"/>																																									
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**Proctor Distance Ticket Inquiry 2 Version 1.0.4**

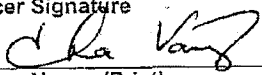
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**CITY OF DULUTH  
CITY ORDINANCE VIOLATION**

This Citation charges you with a violation  
of a Duluth City Ordinance.

For more information, see the reverse side of this ticket.

ICR Number <b>10-399260</b>		Date/Time Issued <b>11-9-2010 @ 0845</b>	
Alleged Violator's Name <b>Zeitgeist Arts, LLC</b>			
Address <b>202 E. Superior St</b>		City <b>Duluth</b>	State <b>MN</b>
		Zip Code <b>55802</b>	
DOB _____		Phone Number <b>(218) 336-1360</b>	
Vehicle Information			
License No.	State	Reg. Expires	
Vehicle Make	Model	Color	
Violation Information			
Date of Violation <b>11-2-2010</b>		Time of Violation <b>2000</b>	
Location <b>202 E. Superior St</b>			
Charge <b>licensee liable</b>		Ordinance No. <b>8-35</b>	
Description <b>minor was served alcohol by employee of Zeitgeist. licensee is liable for sale also.</b>			
Officer Signature 			
Officer Name (Print) <b>Cha Vang</b>		Badge No. <b>375</b>	
Served: In person <input type="checkbox"/> By mail <input checked="" type="checkbox"/>		Positively Identified <input type="checkbox"/>	
Date Due: <b>11-22-2010</b>		Minimum Fine Amount Due: <input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00	
Ticket Number:		<b>LP10 001759</b>	

Ticket Info		Defendant Info	
Ticket Number	LP10001759	Drivers Lic/State/DQB	
Issue Date	11/02/2010	Name Last/First/Mi	ZEITGEIST ARTS LLC
Issue Time	20:00	Street Address	222 E. SUPERIOR ST.
		City/State/Zip	DULUTH MN 55802
		Ticket Detail	
		Fine Amount	200.00
		Penalty	.00
		Miscellaneous	.00
		Bad Check Fee	.00
		Paid Amount	200.00
		Dismissed	.00
		Amount Due	.00
		Disposition	PF
		Disp.Date	11/22/2010
		Tkt.Entered	11/12/2010
		Paym.Entered	11/22/2010
		Return Date	
		Notice1 Date	
		Notice2 Date	
		Notice3 Date	
		Notice4 Date	
		Partial Notice	
		Collection Letter	
		Ticket Type	Manual
		Ticket Status	PAID

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Cancel